

**NOTE: The following is a draft response to a request for reconsideration of an advisory opinion prepared for deliberation by the Citizen's Ethics Advisory Board. It does not necessarily constitute the view of the Board.**

TO: Board Members

FROM: Brian J. O'Dowd, Assistant General Counsel

RE: Reconsideration of Advisory Opinion No. 2006-3

DATE: September 26, 2006

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## INTRODUCTION

The Citizen's Ethics Advisory Board issues this amended opinion in response to a request for reconsideration of Advisory Opinion No. 2006-3 ("Interpretation of General Statutes § 1-84 (q)") submitted by three members of the General Assembly's Government Administration and Elections Committee. The legislators asked that we reconsider our interpretation of § 1-84 (q) in light of: (1) the legislative purpose underlying that provision and (2) the statutory framework of the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes (Code of Ethics).

## BACKGROUND

The following background is relevant to this opinion. The Code of Ethics prohibits a public official or state employee from knowingly accepting any gift from a regulated donor, a category that includes registered lobbyists and any persons<sup>1</sup> the official or employee knows or has reason to know are: (1) doing business with or seeking to do business with his or her department or agency; (2) engaged in activities directly regulated by such department or agency; or (3) prequalified under General Statutes § 4a-100.<sup>2</sup> General Statutes §§ 1-84 (j) and (m). Conversely, none of the persons described above may knowingly give such gifts. General Statutes §§ 1-84 (m) and 1-97 (a).

The term "gift" is defined by statute as "anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return." General Statutes § 1-79 (e). That term does not include, however, what are commonly known as "gifts to the state":

Goods or services (A) which are provided to the state (i) for use on state property, or (ii) to support an event or the participation by a public official

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<sup>1</sup>"Person" is defined as "an individual, sole proprietorship, trust, corporation, limited liability company, union, association, firm, partnership, committee, club or other organization or group of persons." General Statutes § 1-79 (i).

<sup>2</sup>A person prequalified under § 4a-100 is contractor pre-approved for certain state work.

or state employee at an event, and (B) which facilitate state action or functions. . . .

General Statutes § 1-79 (e) (5).

Under the “gift to the state” provision—§ 1-79 (e) (5)—the former State Ethics Commission authorized the acceptance of a variety of goods and services given to the state by regulated donors. Those “gifts to the state” can be broken down into two categories:

1. “Gifts to the state” that *did not* incidentally benefit a particular public official or state employee (for example, the donation of a fax machine to a state entity); and
2. “Gifts to the state” that *did* incidentally benefit a particular public official or state employee (for example, the payment of a state employee’s food, beverage, or travel expenses in connection with attendance at a conference relevant to his or her state position).<sup>3</sup>

If a “gift to the state” from a regulated donor cost fifty dollars or more and—as in the second category—incidentally benefited a particular public official or state employee, then the individual’s superior had to certify in writing to the former State Ethics Commission that it would facilitate state action or functions. Regs., Conn. State Agencies § 1-81-27 (b).

Then came Public Acts 2005, No. 05-287, and the addition to the Code of Ethics of a new provision, codified at § 1-84 (q), which references the “gift to the state” provision. Specifically, § 1-84 (q) provides as follows:

No public official or state employee shall knowingly accept, directly or indirectly, any goods or services provided to the state under *subdivision (5) of subsection (e) of section 1-79* by a person prohibited from making gifts to public officials and state employees under this section or section 1-97.

(Emphasis added.)

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<sup>3</sup>That there exist two categories of “gifts to the state” under § 1-79 (e) (5) finds support in the provision’s legislative history, in which Senator Marie Herbst, who was then Chairperson of the Government Administration and Elections Committee, cited two examples of goods or services that it would be appropriate to accept under this provision: one that would incidentally benefit a public official or state employee (a plant tour), and one that would not (a fax machine). 34 S. Proc., Pt. 11, 1991 Spec. Sess., pp. 18-21. When asked how those goods or services would facilitate state action, Senator Herbst responded: “I guess I will go back to the use of the fax machine, if [it] in some way makes it easier for an agency to operate . . . .” 34 S. Proc., *supra*, p. 21.

In a staff opinion, the interim legal division of the Office of State Ethics (which existed from July 1, 2005, to December 16, 2005) issued a provisional interpretation of § 1-84 (q). It interpreted that subsection “to prohibit gifts to state agencies which incidentally provide a personal benefit to a public official or state employee, in cases where the gift is being made by a regulated donor.” Thus, it noted, “under prior law, a state employee of the banking department . . . could have attended a conference in Washington, D.C., and had his travel costs (airfare, hotel, meals, conference fees) paid for by ABC Bank, a registered lobbyist, as a ‘gift to the state’ . . . .” Now, it continued, with the addition of § 1-84 (q), ABC Bank may not “reimburse the agency or this state employee for such travel expenses, as this state employee would, in going on a ‘free’ trip to Washington, D.C., incidentally receive a personal benefit.”

A request was later made of the Citizen’s Ethics Advisory Board to issue an advisory opinion regarding § 1-84 (q), and we did so in Advisory Opinion No. 2006-3 (April 27, 2006), concluding that “it prohibits the acceptance of all goods or services given to the state under § 1-79 (e) (5) . . . from regulated donors, even if they do not incidentally benefit a particular state official or employee.” Roughly three months after the opinion’s release, three members of the General Assembly’s Government Administration and Elections Committee asked that we reconsider Advisory Opinion No. 2006-3, maintaining that our interpretation of § 1-84 (q) conflicts with the legislative purpose underlying that provision and with the statutory framework of the Code of Ethics.

## QUESTION RECONSIDERED

Whether, and if so to what extent, § 1-84 (q) affects the “gift to the state” provision.

## ANALYSIS

### I. Legislative Purpose

The legislators asked that we reconsider our interpretation of § 1-84 (q) in light of the legislative purpose underlying that provision. Specifically, the legislators maintained that our interpretation of § 1-84 (q) conflicts with the legislature’s intent in enacting the provision, specifically: to “avoid even the appearance that any state official may be influenced when making official decisions if he/she is personally the beneficiary of a gift”; an “influence not present when the gift is provided to the agency without any one individual having the opportunity to ‘partake of or utilize the item.’” This post-enactment expression of legislative purpose by three members of the General Assembly is not properly considered legislative history and, thus, not entitled to any particular weight in our determining the meaning of § 1-84 (q). See, e.g., *Fogg v. Ashcroft*, 254 F.3d 103, 108 (D.C. Cir. 2001) (giving no material weight to post-enactment interpretive memorandum, noting that “this apparent item of legislative history is in fact more like the oxymoron, ‘post-legislation legislative history’”); *General Instrument Corp. v. F.C.C.*,

213 F.3d 724, 733 (D.C. Cir. 2000) (finding “almost no value” in “legislative future,” i.e., post-enactment legislative observations).

## II. Statutory Framework

The legislators also asked that we reconsider our interpretation of § 1-84 (q) in light of the statutory framework of the Code of Ethics, arguing that the Code of Ethics pertains only to the behavior of individual public officials and state employees, not to that of a state entity. To address that argument requires that we engage in statutory interpretation, the fundamental objective of which “is to ascertain and give effect to the apparent intent of the legislature.” (Internal quotation marks omitted.) *Perodeau v. Hartford*, 259 Conn. 729, 735, 792 A.2d 752 (2002). In seeking to ascertain the legislature’s intent, we are mandated to proceed as follows:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

### General Statutes § 1-2z.

#### A. Text of § 1-84 (q)

As mandated by statute, we start with the text of § 1-84 (q), which provides as follows:

No public official or state employee shall knowingly accept, directly or indirectly, any goods or services provided to the state under subdivision (5) of subsection (e) of section 1-79 by a person prohibited from making gifts to public officials and state employees under this section or section 1-97.

In Advisory Opinion No. 2006-3, we concluded that the plain meaning of the language in § 1-84 (q) “is that it prohibits the acceptance of all goods or services given to the state under § 1-79 (e) (5) . . . from regulated donors, even if they do not incidentally benefit a particular state official or employee.” That interpretation prohibits not only a public official or state employee from accepting goods or services given to the state under the “gift to the state” provision by a regulated donor; it also prohibits a state entity from doing so, regardless of whether a public official or state employee incidentally benefits from such goods and services. Thus, when it comes to regulated donors, that interpretation wiped out both categories of “gifts to the state” listed in the background section—those that incidentally benefit a particular public official or state employee (e.g., food, beverage, or travel expenses in connection with a job-related conference) and those that do not (e.g., a fax machine given to a state entity).

Upon further reflection, it appears that the language in § 1-84 (q) allows for an alternative reading, namely, that it prohibits *only* those “gifts to the state” provided by a regulated donor that incidentally benefit a particular public official or state employee. In other words, it prohibits a public official or state employee from knowingly accepting, directly or indirectly, any goods (e.g., meal expenses in connection with a job-related conference) or services (e.g., training) given to the state under the “gift to the state” provision by a regulated donor. This reading would, for the purposes of regulated donors, eliminate the second category of “gifts to the state” listed in the background section (those that incidentally benefit a particular public official or state employee), but leave untouched the first category (those that do not).

Given that there exist two different, but equally plausible, interpretations, the question is whether either interpretation is bolstered when the language of § 1-84 (q) is viewed in relationship to other statutes.

#### B. Other Statutory Provisions

We are mandated by statute to view the language of § 1-84 (q) not in isolation but in relationship to other statutes in determining whether its meaning is plain and unambiguous. See General Statutes § 1-2z. Consistent with that directive is the principle that “the legislature is always presumed to have created a harmonious and consistent body of law . . . [and] to know all the existing statutes and the effect that its action or non-action will have upon any one of them.” (Internal quotation marks omitted.) *Board of Education v. State Board of Education*, 278 Conn. 326, 333-34, 898 A.2d 170 (2005). Accordingly, “[w]e are obligated . . . to read statutes together when they relate to the same subject matter.” *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council*, 215 Conn. 474, 482-83, 576 A.2d 510 (1990).

It has come to our attention that the subject matter at issue—the acceptance of goods or services given to the state—is governed not only by the Code of Ethics, but also by other statutes outside of the Code of Ethics. For instance, under General Statutes § 3-33, “[t]he state, acting by the Treasurer, is authorized to accept gifts or devises of land to be used by the Military Department, provided said land is free and clear of all encumbrances and is not charged with any trust or condition. . . .” Section 3-33 is but one of many such statutes, including, for example:

- General Statutes § 4b-60 (c): The Commission on Capitol Preservation and Restoration “is authorized to accept gifts, donations and grants from the federal government or other public or private sources for the purpose of such preservation and restoration.”
- General Statutes § 22-83: The Board of Control of the Connecticut Agricultural Experiment Station “is authorized to accept in the name of the state gifts or loans of land and equipment and gifts of money, to be used exclusively for the purposes of this section. . . .”

- General Statutes § 17a-214: “The Commissioner of Mental Retardation may accept and receive, on behalf of the Department of Mental Retardation, any bequest or gift of money or personal property and, subject to the consent of the Governor and Attorney General as provided in section 4b-22, any devise or gift of real property to the Department of Mental Retardation, and may hold and use such property for the purposes, if any, specified in connection with such bequest, devise or gift.”
- General Statutes § 10-76c: “The State Board of Education . . . may receive money, securities or other personal property by gift, devise or bequest to be used for the education of children requiring special education in accordance with the provisions of sections 10-76a to 10-76h, inclusive, and the wishes of the donor.”<sup>4</sup>

Under our initial reading of § 1-84 (q)—which prohibits the acceptance of all “gifts to the state” given by regulated donors—if the Treasurer, pursuant to her authority under § 3-33, accepts from a regulated donor a gift of land to be used by the Military Department, she will have violated the Code of Ethics and be subject to a \$10,000 fine. That is, she will have violated the Code of Ethics by doing what she is otherwise expressly authorized by § 3-33 to do. Thus, for all practical purposes, our initial reading of § 1-84 (q) created a conflict between that provision and § 3-33 (and the other provisions listed above) and, thereby, violated the principle that an interpretation that results in a conflict between statutes is to be avoided if at all possible. See 2B J. Sutherland, *Statutory Construction* (5<sup>th</sup> Ed. Singer 1992) § 51.02, p. 122; see also *Tolly v. Dept. of Human Resources*, 225 Conn. 13, 28, 621 A.2d 719 (1993) (“[s]tatutes should be read so as to harmonize with each other, and not to conflict with each other”).

As suggested above, it “is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter.” 2B J. Sutherland, *supra*, § 51.02, p. 121. And—as is the case here—absent any express repeal of, or amendment to, the previous statutes (e.g., § 3-33), the new provision (i.e., § 1-84 (q)) is presumed to be in accord with the legislative policy embodied in those prior statutes, so as to allow the prior and later statutes to be construed together. See *id.* That said, we must seek to harmonize § 1-84 (q) with the other statutes, provided, of course, that a rational construction of § 1-84 (q) giving full effect to the other statutes is reasonably possible. See 2B Sutherland, *supra*, § 51.02, p. 122 (“[s]tatutes for the same subject, although in apparent conflict, are construed to be in harmony if reasonably possible”); see also *Malerba v. Cessna Aircraft Co.*, 210 Conn. 189, 192, 554 A.2d 287 (1989) (“[i]f the statutes appear to be repugnant, but both can be construed together, both are given effect” [internal quotation marks omitted]).

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<sup>4</sup>Additional examples include: General Statutes §§ 13b-34 (a), 17a-18, 17a-454, 18-83, 19a-427, 23-5h, 25-208 (a), and 28-15 (a).

There does indeed exist such a rational construction, and—rather than maintain an interpretation of § 1-84 (q) that created such a conflict—we adopt this alternative construction. That is, we conclude that the language of § 1-84 (q)—when viewed in context—allows for one interpretation, namely: it prohibits *only* those “gifts to the state” given by a regulated donor that incidentally benefit a particular public official or state employee. This reading eliminates, for the purposes of regulated donors, the second category of “gifts to the state” listed in the background section (those that incidentally benefit a particular public official or state employee), but leaves intact the first category (those that do not). Thus, for example, a public official or state employee may not knowingly accept, directly or indirectly, any goods (e.g., meal or travel expenses in connection with a job-related conference) or services (e.g., training) given to the state under the “gift to the state” provision by a regulated donor; but a state entity may accept a fax machine provided by the same donor.

## CONCLUSION

In light of the fact that there exist other statutes outside the Code of Ethics that also govern the acceptance of goods or services given to the state, it is the opinion of the Citizen’s Ethics Advisory Board that the plain language of § 1-84 (q)—when viewed in context—prohibits only those “gifts to the state” given by regulated donors that incidentally benefit a particular public official or state employee.